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January 21, 2009

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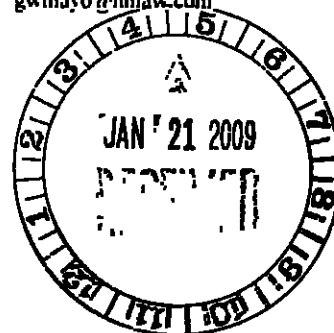
BY HAND

The Honorable Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 F Street, SW  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings

JAN 21 2009

Part of  
Public Record



Re STB Finance Docket No. 35215  
National Railroad Passenger Corporation –  
Application under 49 U.S.C. § 24311(c) To Condemn  
Certain Rail Carrier Property in Atlanta, Fulton County, Georgia –  
Norfolk Southern Railway Company

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of National Railroad Passenger Corporation's Notice of Intent To File Application under 49 U.S.C. § 24311(c) To Condemn Certain Rail Carrier Property and Request for Establishment of Procedural Schedule, together with a check for the required filing fee of \$200.00.

If you have any questions or I can be of any assistance, please let me know.

Respectfully,

George W. Mayo, Jr.

**FILED**

JAN 21 2009

**SURFACE  
TRANSPORTATION BOARD**

cc. All Parties in Interest

Enclosures

**FEE RECEIVED**

JAN 21 2009

**SURFACE  
TRANSPORTATION BOARD**

224381

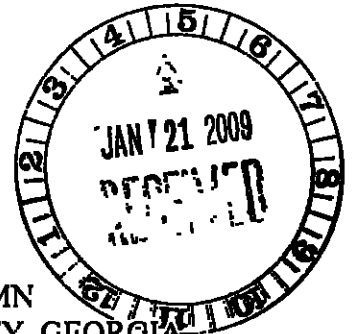
BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35215

NATIONAL RAILROAD PASSENGER CORPORATION  
- APPLICATION UNDER 49 U.S.C. § 24311(C) TO CONDEMN  
CERTAIN RAIL CARRIER PROPERTY IN ATLANTA, FULTON COUNTY, GEORGIA  
NORFOLK SOUTHERN RAILWAY COMPANY

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**NATIONAL RAILROAD PASSENGER CORPORATION'S  
NOTICE OF INTENT TO FILE APPLICATION UNDER 49 U.S.C. § 24311(C)  
TO CONDEMN CERTAIN RAIL CARRIER PROPERTY AND  
REQUEST FOR ESTABLISHMENT OF PROCEDURAL SCHEDULE**

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**FILED**  
JAN 21 2009  
SURFACE  
TRANSPORTATION BOARD

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COUNSEL FOR NATIONAL RAILROAD  
PASSENGER CORPORATION

Dated: January 21, 2009

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SURFACE  
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BEFORE THE  
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FINANCE DOCKET NO. 35215

NATIONAL RAILROAD PASSENGER CORPORATION  
– APPLICATION UNDER 49 U.S.C. § 24311(C) TO CONDEMN  
CERTAIN RAIL CARRIER PROPERTY IN ATLANTA, FULTON COUNTY, GEORGIA –  
NORFOLK SOUTHERN RAILWAY COMPANY

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**NATIONAL RAILROAD PASSENGER CORPORATION’S  
NOTICE OF INTENT TO FILE APPLICATION UNDER 49 U.S.C. § 24311(C)  
TO CONDEMN CERTAIN RAIL CARRIER PROPERTY AND  
REQUEST FOR ESTABLISHMENT OF PROCEDURAL SCHEDULE**

The National Railroad Passenger Corporation (“Amtrak”) hereby provides notice of its intent to file an application under 49 U.S.C. § 24311(c) to acquire the rail passenger service easement owned by Norfolk Southern Railway Company (“NS”) in regard to a 4.30-mile railroad line between mileposts DF 633.10 and DF 637.40, in Atlanta, Fulton County, Georgia (the “Line”). The Line (and more accurately, the freight and passenger rail service easement over the Line held by NS) is currently the subject of an abandonment proceeding (SIB Docket No. AB-290 (Sub-No. 210x)). Petitions for stay of that proceeding have been filed by the Georgia Department of Transportation (“GDOT”) and Amtrak; entry of the requested stay – delaying the

effective date of any abandonment authority pertaining to the Line – would be in aid of the Board’s jurisdiction in the instant condemnation proceeding.<sup>1</sup>

#### **I. Amtrak Statutory Authority**

Pursuant to 49 U.S.C. § 24311(c)(1), where “Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation,” Amtrak may apply to the Board “for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation.”<sup>2</sup> The statute further provides that:

The need of Amtrak is deemed to be established, and the [Board], after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the [Board] decides that –

(A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and

(B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.

Id.<sup>3</sup>

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<sup>1</sup> In National Railroad Passenger Corp. – Conveyance of Conrail Line in Wayne County, MI, Finance Docket No. 30898, Decision at 1 n.2 (served Oct. 6, 1986), the Board’s predecessor held in abeyance a then-ongoing abandonment proceeding related to the line Amtrak proposed to acquire through condemnation. See National Railroad Passenger Corp. – Conveyance of Conrail Line in Wayne County, MI, Finance Docket No. 30898, Decision at 1-3 (served Dec 2, 1986) (further discussing appropriateness of holding abandonment proceeding in abeyance). Here, the Board should do the same.

<sup>2</sup> NS has advised Amtrak that it is not in a position to sell Amtrak the easement which is the subject of this proceeding.

<sup>3</sup> The statute does not require the compensation issue to be decided in the referenced 120-day period. Specifically, it provides that “[i]f the amount of compensation is not determined by the date of the Commission’s order, the order shall require, as part of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.” 49 U.S.C. § 24311(c)(2).

As Amtrak will demonstrate in detail in its Application, the acquisition it proposes clearly satisfies this standard. First, conveyance of the passenger rail service easement to Amtrak will not in any respect impair the ability of NS "to carry out its obligations as a common carrier," given that the Line has not handled any traffic for some eight years and is currently the subject of an abandonment proceeding. Second, the Line is a critical link in the rail route that would be used by Amtrak trains (including Amtrak's New York-Atlanta-New Orleans *Crescent*) and future high speed rail passenger trains to access the proposed Multimodal Passenger Terminal in Atlanta; there are no viable alternate routes. In sum, there is no question but that Amtrak is entitled to acquire the Line under the authority of 49 U.S.C. § 24311(c)

## **II. The Line**

The Line is discussed at length in various filings made in STB Docket No. AB-290 (Sub-No 210x), the currently ongoing abandonment proceeding related to the Line. It is comprised of 4.30 miles of line between milepost DF 633.10 and milepost DF 637.40, in Atlanta, Fulton County, Georgia. NS sold fee ownership of the Line to a local developer in 2004 (this fee ownership was eventually acquired by the Atlanta Development Authority), but reserved for itself an operating easement and complete operating authority for both freight and passenger rail service.<sup>4</sup>

On December 3, 2008, NS filed a verified notice of exemption pertaining to the Line. The abandonment will become effective on January 22, 2009 unless this effective date is stayed

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<sup>4</sup> See Order, STB Docket No. AB-290 (Sub-No. 210x), at 1 & n.2 (served Dec. 21, 2007); Reply of the Atlanta Development Authority and Atlanta Beltline, Inc. to Georgia Department of Transportation's Petition for Stay (STB Docket No. AB-290 (Sub-No 210x)), at 1 (Jan. 7, 2009) (the Atlanta Development Authority and Atlanta Beltline, Inc. are referred to collectively as the "Authority")

GDOT and Amtrak have filed petitions to stay the effective date; these petitions have been opposed by NS and the Authority.

The Line is of particular importance to Amtrak because it is part of the routing Amtrak would use to access the proposed Multimodal Passenger Terminal in Atlanta, not only for its currently operating New York-Atlanta-New Orleans *Crescent*, but also for future high speed rail passenger trains. There is no practical alternate route. Absent the availability of this routing, all intercity passenger train service into downtown Atlanta would have to operate via the so-called "Trunk Line Route" – a combined NS/CSX trunk line on the west side of the Atlanta. Because of its heavy freight utilization, circuitry, and alignment (which would require trains operating through Atlanta to reverse direction), the Trunk Line Route would not be a practical alternative. Preservation of the routing provided by the Line is made all the more critical by the fact that the *Crescent*'s route is also the route the U.S. Department of Transportation has selected for the federally-designated Southeast High Speed Rail Corridor. A GDOT-commissioned study by the Volpe Transportation Institute, released earlier this month, concluded The Line was also the preferred routing for future Charlotte-Atlanta-Macon high speed rail service <sup>5</sup>

Taking these considerations into account, it is essential that Amtrak preserve its ability to utilize a routing over the Line in order to assure workable and efficient access to downtown Atlanta. Accordingly, Amtrak is turning to its condemnation authority under 49 U.S.C. § 24311(c) to acquire from NS the passenger service easement that will assure it of this access.

### **III. Proposed Procedures and Schedule**

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<sup>5</sup> Volpe Transportation Institute, Evaluation of High-Speed Rail Options in the Macon-Atlanta-Greenville-Charlotte Rail Corridor (available at [http://www.sehsr.org/reports/hsr/eval\\_hsr\\_options.pdf](http://www.sehsr.org/reports/hsr/eval_hsr_options.pdf)).

The Board has not promulgated any regulations dealing specifically with Amtrak applications under 49 U.S.C. § 24311(c). It will therefore be necessary for the Board to specify the procedures and schedule that will govern this proceeding.

Amtrak urges that the proceeding be conducted under the Board's modified procedures.

See 40 C.F.R. Part 1112. Amtrak further urges that the following schedule be adopted:

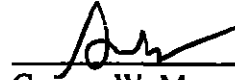
<b>Board Decision Instituting Proceeding</b>	<b>Start Date</b>
Amtrak Application and Supporting Argument and Evidence	45 Days Following Start Date
Opposition Argument and Evidence	75 Days Following Start Date
Amtrak Reply Argument and Evidence	90 Days Following Start Date
Final Board Decision	165 Days Following Start Date

In order to develop the compensation evidence necessary to support its case, Amtrak will likely need to conduct expedited discovery of NS. Because of the expedited schedule governing the proceeding and to facilitate focused discovery during the time available, Amtrak urges that NS be directed to make available to Amtrak within ten days following the Board Decision instituting the proceeding all information relevant to determining the amount of compensation Amtrak should pay NS for the passenger rail service easement over the Line.<sup>6</sup>

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<sup>6</sup> Because Amtrak has only limited resources available to acquire the passenger rail service easement over the Line, it must reserve the right not to proceed with acquisition of this easement if the Board's resolution of the compensation issue results in a price Amtrak is unable to fund taking into account its other financial obligations. See National Railroad Passenger Corp. – Conveyance of Boston & Maine Corp. Interests in Connecticut River Line, 4 I.C.C.2d 761, 806 (1988) (giving Amtrak 20 days following the Commission's determination of compensation to determine whether to proceed with the condemnation or withdraw its application).

Respectfully submitted,



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COUNSEL FOR NATIONAL RAILROAD  
PASSENGER CORPORATION

Dated: January 21, 2009



## **CERTIFICATE OF SERVICE**

I hereby certify this 21<sup>st</sup> day of January, 2009, that I have caused the foregoing National Railroad Passenger Corporation's Notice of Intent To File Application under 49 U.S.C. § 24311 (c) To Condemn Certain Rail Carrier Property and Request for Establishment of Procedural Schedule to be served as indicated below on the following

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